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ABSTRACT

Four lawyers and one educator speaking to a conference of educators, lawyers, law enforcement personnel, community leaders, and students from New Jersey, New York, and Pennsylvania interested in legal education in elementary and secondary school are represented here. The speakers suggest more constructive ways of integrating law into the school curriculum than the usual "Law Day" speakers. All of the speakers feel that underlying concepts of the law and analytical thinking involved in the exercise of those concepts are valuable curriculum commodities because of their applicability to our everyday lives. Some speakers suggest specific programs either bringing law into the classroom, for example, through "hot lines" for on the spot legal advice on questions raised in class, or by taking students out of the class and putting them into real situations requiring legal resolutions, such as spending a night in jail. Other speakers highlight areas particularly accessible to the analytical tools developed by legal education, such as conflicting social values. (Author/JH)

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Reflections on Law-Related Education

Selection from Regional Conference on Law-Related Education
Philadelphia, Pennsylvania—May 21-23, 1973
Working Papers No. 3

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Many Americans seem to lack the understanding necessary to live successfully within our legal system or to utilize the democratic process in order to improve it. Americans increasingly respond to public crises with confusion, frustration, violence or (perhaps worst of all) apathy. While there are many theories as to the causes of this complex and disturbing situation, one fact stands out: For too long an operative understanding of law and the legal system has largely been available only to those who had a law school education. Yet the law permeates the daily lives of all of us. Every consumer purchase, lease, divorce, petty crime or traffic violation brings the citizen into contact with the law. Everyone cannot attend law school. However, aspects of legal training, including the development of analytical skills and the capacity for clear thinking, can be modified and adapted for use in elementary and secondary education.

Recognizing the urgent need, the ABA established the Special Committee on Youth Education for Citizenship. YEFC is supporting the creation and improvement of interdisciplinary programs in communities throughout the country. We are not, however, developing a proprietary interest in any curriculum materials, teacher training institutes or project models. Our mission is primarily facilitative. YEFC is stimulating and coordinating projects in the field and serving as a national clearinghouse for information. In addition, members of YEFC staff devote a portion of their time in the field consulting with community leaders, including representatives of the bar, school authorities and law enforcement agencies in the development of local programs.

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What a subject is this in which we are united—this abstraction called the Law, wherein, as in a magic mirror, we see reflected, not only our own lives, but the lives of all men. . .disclosing every painful step and every world-shaking contest by which mankind has worked and fought its way from savage isolation to organic social life.

—Oliver Wendell Homes

Working Notes No. 3

This is the third issue of Working Notes, published by the American Bar Association Special Committee on Youth Education for Citizenship (YEFC). *Reflections on Law-Related Education* contains the major speeches presented at the YEFC Regional Conference on Law-Related Education in Philadelphia on May 21-22, 1973. This Conference was the second in a series sponsored by the ABA Special Committee on Youth Education for Citizenship, and was co-sponsored by the Pennsylvania Bar Association and the Pennsylvania State Department of Education. Over 180 educators, lawyers, law enforcement personnel, community leaders, and students from New Jersey, New York, and Pennsylvania were brought together to experience firsthand the techniques of teaching law in elementary and secondary schools, as well as to explore the rationale behind the movement to make law an integral part of elementary and high school education. Or, to put it as John Pittenger did, we brought these groups together so that "the lawyers will learn about schools, the educators will learn about the law, and we will all learn how to put the two together into some programs which will give kids the insights they need to function in a society where the law impinges on all people's lives more frequently and more intensely than ever before."

The first article is based upon the address delivered by Earl F. Morris. Mr. Morris, a past-president of the American Bar Association, was Chairman of the ABA Special Committee on Youth Education for Citizenship at the time of the Conference. The second article contains the words of welcome which William M. Power, President of the Pennsylvania Bar Association, delivered to the Conference. John C. Pittenger is Secretary of Education of the Commonwealth of Pennsylvania. He is a lawyer by profession and has written and taught about law for secondary students. Joel F. Henning is Staff Director of YEFC. He has practiced corporate law, published widely, and is a Fellow of The Adlai Stevenson Institute for International Affairs. Isidore Starr is a Professor of Education at Queens College. He has written a number of books for classroom use in law-related education, and is a past-president of the National Council for the Social Studies.

Reflections on Law-Related Education

Speeches from Regional Conference on Law-Related Education
Philadelphia, Pennsylvania—May 21-22, 1973
Working Notes No. 3

Editor
SUSAN DAVISON, Assistant Staff Director, YEFC

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Developing Law-Related Studies: The Roles of Educators And Lawyers

Earl F. Morris *Immediate Past-Chairman*
ABA Special Committee on
Youth Education for Citizenship

We thought it might be helpful if I spent a few minutes talking with you about some of the reasons why the American Bar Association has jumped with both feet, hopefully keeping its head above water, into the stormy sea of elementary and secondary education. We have not only taken the plunge ourselves, but have invited and encouraged state and local bar associations across the country to join us. As was expressed in a recommendation that was adopted at the recent midyear meeting of the American Bar Association, we urge

state and local bar associations to establish joint committees with state and local educational authorities to develop interdisciplinary programs in law-related citizenship education for elementary and secondary school students . . . The goal of all such programs should be to insure that American young people are offered a rigorous and effective education in law, the legal process and related matters throughout their elementary and secondary education.

I am informed that bar associations in Pennsylvania have initiated a number of projects, including those of the Young Lawyers Section and the Public Relations Committee of the State Bar. In New Jersey, bar associations have given their support to several projects including one that you will see in action here - the Multi-District Institute for Political Education. And finally, the New York State Bar Association has also been active in mock trial programs and curriculum development. We hope that the events of the next twenty-four hours will serve to stimulate further action on the part of state and local bar associations in this region.

* * *

I need not tell a group such as is assembled here today that America's young people, by and large, have little understanding of and, I fear, less faith in our legal system than we would hope. Delinquency rates soar in the suburbs as well as in the city. Where political activism exists, it often reveals a narrow-mindedness and intolerance which is frightening.

The blame for this cannot be placed on any one segment of society. **It is partly the fault of the legal profession.** The law has been presented as a highly complex and technical maze, incomprehensible to the lay person. It seems hard for many outside the profession to believe that the law is really there to

work for them. We in the profession of law need to help to make an operative understanding of our legal system an essential goal of elementary and secondary education.

Responsibility for this failure must be shared by the educational system. In an era when math and science play such important societal roles, and when reading scores are correlated with occupational success, citizenship education as we have known it in the past seems a dreary and lifeless pursuit. Mere recitations of the basic rights guaranteed by our founding fathers do not easily connect with the application of those rights to the complex issues of today. Civics courses offer superficial facts which frequently do not speak to modern youth. Old approaches offer little relevance to contemporary society.

The ferment of society itself does not make our goal any easier to achieve. Values and culture are in chaos. Life in the 70's is more complex than man has ever before experienced it. With the young we sail between the Scylla of permissiveness and the Charybdis of unreasonably restrictive and punitive measures which tend to alienate them from the legal system. We have not given them an understanding of how the law can and must function to balance the needs for individual rights with the imperatives for individual responsibility.

• • •

It has been my privilege for the past two years to serve as Chairman of the American Bar Association Special Committee on Youth Education for Citizenship. During that time I have seen the fruitful results of lawyers and educators working together to ameliorate the deficiencies in our educational system. At first glance it may seem that lawyer and teacher working together is, at the least, an unlikely combination. However, on further reflection, that commonality between them becomes, I believe, considerably more evident.

In spite of what our critics say of us, both lawyers and educators are committed to the highest of ideals. An important part of the foundation from which the lawyer works is the Bill of Rights which expresses a vision of a society with the least possible inequities and the most potential for human development, a society which takes into account both individual rights and societal responsibility. It is in the same vein that the educator, using the best of educational philosophy, helps to socialize children while encouraging the most of each individual's potential.

Secondly, both lawyers and educators understand the nature of a functional community. While lawyers and the justice system work to minimize conflict between individuals and between the individual and society, the teacher is daily confronted with a classroom full of separate and distinct individuals, who hopefully will learn to function together for the common good while developing their own character and goals.

Third, and finally, another point of mutuality is the commitment to the clearest possible thinking and the development and sharpening of analytical ability. There are no easy and clear-cut answers in the law. Every issue requires careful and methodical thinking and, even then, no one answer may distinctly stand out. The best of teachers also work to develop sharp thinking and analytical ability in their students. Law studies, we believe, can aid greatly in the pursuit of such skills. They can make apparent to young people that a fair decision cannot be arrived at without a careful mapping out of all the logical steps used to arrive there. These studies can be inspired by encouraging students to help in making decisions that will affect them.

• • •

Our Committee has been and is pleased to be working to bring lawyers and educators together for the purposes which I have indicated. We are dedicated to the proposition that the best way to improve law-related education is by combining the efforts of lawyers, representatives of justice agencies, community leaders, and students with those of the classroom teacher, where the final responsibility, of course, lies, because it is he or she who must transmit the vital knowledge and skills of law-related education to students.

And now may I make it abundantly clear that our Committee has no proprietary interest in promoting particular strategies or materials. We seek instead to bring together lawyers and educators in each community and help acquaint them with the available resources from which they can choose, so that they can determine a program which will best reflect their community's own cultural and educational needs and aspirations. One of the vehicles for this is the Regional Conference, the first of which we held in Atlanta in February, and upon the second of which we today embark. A tremendous amount of work lies ahead if we are in some reasonable degree to achieve the goals that I have outlined. We trust that with your assistance and with the assistance of lawyers, teachers and others in Pennsylvania, New Jersey, and New York, efforts in your communities will be enlarged and improved. I suggest that the hour is late. There is no time for leisurely evolution of programs. While we must move intelligently and effectively, we must move now.

Remarks Before the Regional Conference on Law-Related Education at Philadelphia, May 21, 1973

William M. Power *President*
Pennsylvania Bar Association

The importance that the American Bar Association attaches to the subject of this Conference is indicated by the fact that a former president of that Association, namely Earl Morris, was appointed to chair the Special Committee on Youth Education for Citizenship.

As President of the Pennsylvania Bar Association, it is my privilege to bring you greetings on behalf of the nearly 11,000 lawyers who are the Pennsylvania Bar. For many months, this association has been working in concert with the American Bar Association and the Pennsylvania State Department of Education to plan and implement this two-day Conference. I am convinced that the time and the effort were well spent.

I am also convinced that all of us - lawyers, educators, laymen - must recognize the importance of incorporating the law into our state educational system at all levels, but particularly at the junior high and high school levels. Obviously, it is one thing to say it--quite another to do it. And yet, I submit, we have no choice.

We hear and read much that condemns our young people for their presumed disinterest in the law, or, worse, their alienation from it. I suggest that disinterest or alienation are merely symptomatic of a lack of understanding which is exasperating. We are the beneficiaries of this great system of law, this epic creation of Western man, and somehow we have been largely unable to tell its story to our youth.

This Conference is an important first step toward reversing that failure. In the next two days, you will be looking at existing curriculum materials in this area, examining the potential of lawyers in the classroom and exploring the need for new training opportunities for our teachers, all of which are intended not to transform secondary schools into mini-law schools, but rather to provide learning experiences for our young people so that, by understanding, they may come to appreciate the law.

In my address to the House of Delegates of the Pennsylvania Bar Association on February 1st of this year, I informed its members that I intended to request the Young Lawyers Section and the Youth Committee to explore with the educators in Pennsylvania, and elsewhere, if advisable, the possible introduction into our schools, both public and private, of a law-related educational program, the very subject of this Regional Conference. Therefore, you can appreciate my personal interest in the success of this Conference.

It is my sincere hope that through your combined efforts law-related education in the schools of all states represented here becomes a reality, and that in the near future our school children will learn in the classrooms about the law, how it protects them, the consequences of violations thereof, and that they will thereby appreciate and respect the same.

The Spirit of Liberty and the Classrooms of Pennsylvania

John C. Pittenger Secretary of Education, Pennsylvania State Department of Education

Few issues that I deal with as Secretary of Education come as naturally to me as the topic of this Conference, for I am a lawyer by training, an educator by appointment, and a student by necessity. I can identify closely with every person in this audience, not just on the basis of a shared concern about education and the law, but equally important, on the basis of my own personal experiences. I practiced law in Lancaster for several years. I have taught political science at Harvard and Franklin & Marshall and, most recently, at John Harris High School. And the day I stop being a student of law or education -- of society itself -- I think I will hang up my hat and start thinking about the afterworld.

As Secretary of Education I don't often have the chance to operate in a milieu where I feel so much at home. When I have to make decisions about school construction policies, I wish I were an engineer. When I have to consider a policy at the Retirement Board, I wish I were an investment broker. When I have to approve a performance evaluation system, I wish I were a personnel specialist. But today, as a lawyer, an educator and a student, and if I am permitted to say so, as the author of a book for high school students on constitutional law, I feel relaxed. Most important, I am enthusiastic about this Conference and the activities that I hope it will spark.

I guess almost all of us here today are students. During the next 24 hours, the lawyers will learn about schools, the educators will learn about the law, and we will all learn how to put the two together into some programs which will give kids the insights they need to function in a society where the law impinges on all people's lives more frequently and more intensely than ever before.

* * *

A group of students somewhere in the Midwest, I believe, did a sidewalk survey for a government course a few years ago and found that many people not only did not recognize the Bill of Rights, but, without the benefit of its title, described it as "Communist propaganda." A government which takes pride in being based on laws, not men, is in serious trouble when that kind of public ignorance exists.

How do we overcome that ignorance? Schools are a good place to start. I have several reasons for wanting to incorporate study of law into the educational system at every level, from grade school up, but especially in our secondary schools and colleges.

First, it is intrinsically interesting. I had the privilege, this past fall, of teaching a ten-week unit on civil liberties to two vocational classes in Harrisburg High School. This is in many ways a typical big city

high school. Many of its students were turned off long ago. But I can truthfully report that in spite of my own lack of skill, it was no real problem to get them to think about such matters as the rights of a juvenile in court; the propriety of taking blood samples from an allegedly drunken driver; *de facto* segregation; and Bible reading in the public schools. There is a drama, and -- to use their favorite word -- a relevance which even my own ineptitude could not wholly obscure.

My second reason for wanting to inject a liberal dose of the law into the curriculum lies in the fact that the study of law helps to sharpen and toughen the mind.

I have often been exasperated, both as a legislator and as a cabinet member, by having to listen to people making arguments that were essentially irrelevant to the question before us. The ability to grasp what facts and what arguments do indeed bear on the central issue: that quality, more than anything else, seems to me to distinguish lawyers from laymen. Lawyers have other less endearing qualities. But the ability to marshall facts in support of an idea, and to untangle the relationships between ideas, are important skills, and ones that are widely neglected by our educational system.

My third major reason for wanting to inject the law into public education lies in the fact that the law is surely one of the two or three most impressive creations of Western society. It is the fashion today to complain that young people have no interest in history and no understanding of it. I have done my share of complaining. But I wonder whether we are altogether fair. What passes for history in our schools has too often been (to quote my favorite authority) "to know the Kings of England and to quote the fights historical, from Marathon to Waterloo in order categorical."

• • •

To say that law should be woven into the texture of education is one thing. To do it is another. But let me make a few suggestions.

The first few are negative. I don't think that the methods which local bar associations have conventionally used -- Law Day essays on "Why I'm Proud To Be An American" or "Our Most Precious Freedom"--are very helpful. We don't teach students in the law schools by means of solemn exhortation. We gave that up around 1890. We teach them by rubbing their noses in the dirt of reality: by making them read about real people and real cases. I think, with modifications, that's how we ought to teach everybody about the law.

We ought not to consider the casual visit to the courthouse as a legitimate field experience either. As far as I'm concerned, more time and money has been wasted on such isolated jaunts than the number of teachers' headaches would justify. If kids are going to go to the courthouse, they ought to have explored in advance why that courthouse exists and what is supposed to happen inside. Then let them see the law in operation and analyze whether theory and reality match up. In short, make that visit not an experience in itself, but part of a larger learning process in which students use the world to test out theory in the crucible of reality.

Having berated the bar for its pompous essay contests and the educators for their sometime useless field trips, let me get in my druthers about the bench. I think judges have better things to do with their time than traveling around to schools giving intimidating lectures on "why you better not break the law or else." I sympathize with their desire to impart knowledge about the law as a deterrent to illegal activity. But if that's the only message -- that you learn about the law simply to avoid the penalties involved if you get caught breaking it -- then we demean the law and ignore its vision, its vitality and its durability.

• • •

So much for the "don'ts." Now a few words about the "do's." Let me begin with a quote from the foreword of the book on civil liberties which Henry W. Bragdon and I wrote four years ago:

This book is not for you if you believe that a better society is promoted by breaking the law -- looting, destroying public records, throwing rocks at policemen. It is not for you if you favor vigilantism, or if you think that the police should be a law unto themselves. This book is for you if you believe in the ideal of orderly progress toward equal justice under law. It is for you if you wish to begin to understand the way lawyers and judges think. It is for you if you wish to find out where American liberties stand today, by looking back into their long past and by glimpsing into the future.

In his professorial days, Woodrow Wilson had a student who wrote on an examination paper:"This question is unfair; it requires thought." This book is unfair in the same way. Its central feature is a series of recent cases in the federal courts involving constitutional rights. In every instance, learned and conscientious judges disagreed. You are asked to put yourself in the place of these judges. To do this you must study the Constitution itself and the way it has been interpreted since 1789. You must learn certain legal terms and concepts. Then you must apply your recent knowledge to the facts of a particular case, make up your mind, and explain your reasoning. You must think, and think hard.

But neither this text, nor any text, is sufficient to bring into total focus the complexities and subtleties

of legal thought and practice. I doubt that a combination of the best teacher, the brightest students and the most brilliant text could achieve that goal without the help of lawyers and direct experience in the legal system.

Lawyers ought to teach in our schools and colleges much more frequently than is now the case. We have a provision in the School Code of Pennsylvania, unusual I think, permitting a non-certificated teacher to teach in the public schools up to 300 hours a year. In a small number of cases young practicing lawyers are doing just that. I would like to multiply those instances by a couple of hundred.

Young people ought to be out in the community observing our system of civil and criminal justice at work. My department is currently encouraging high schools to let students spend part of each day or week in the community, working in various public and quasi-public institutions. Why not in courts, in judges' chambers, in probation offices, in police headquarters and in law offices?

It has often puzzled me that law occupies such a relatively unimportant place in undergraduate education in this country. When I was in college Mark de Wolfe Howe and Paul Freund began to offer a single course which dealt each year with the development of a different concept in Anglo-Saxon legal history. That was it. It was possible for a student to get through four years of Harvard College and to know absolutely nothing about the origins and current problems in what is, as I suggested, one of our two or three noblest creations.

This situation is, of course, a by-product of the idea that law is a matter for professional study only. Just as the doctors have put a fence around medical knowledge and practice, and a big sign, "AMATEURS, KEEP OUT," lawyers have tended to do the same thing. For reasons which I have suggested, I think that is a mistake. Every high school and every college ought to offer studies in law. The study of law is at least as civilizing as the study of economics or chemistry. I'm not suggesting that high schools and colleges emulate law schools. The objectives are quite different. But the opportunity is there.

* * *

I would like to highlight some examples from Pennsylvania schools in which that opportunity is being used.

In 1970, the social studies staff of the Department of Education sent out to all our school districts a course called "Lessons in Conflict," developed by William Gibson of the Boston University Law School. By coincidence, the Assistant Superintendent in Greater Latrobe was looking for a way to incorporate law into their curriculum. So, using Gibson's material and the added insights of the district's curriculum coordinator and solicitor, he brought the course into being. In addition, Latrobe has tapped the resources of its legal practitioners for teacher training, rap sessions with students and "hot line" service to straighten out confusing issues that arise during class. As for the students, 300 of them signed up for the course when it was first offered and the level of interest is increasing yearly.

Variations on the Latrobe theme are found across the Commonwealth. The Wyoming Area School District received a grant from the Governor's Justice Commission to develop a course which was spearheaded by the Federal Programs Coordinator. Based on textbooks written by teachers and supplemented with a series of films on prisons and trials, the course is taught in all 3rd and 6th grades and some 7th grades in all public and non-public elementary schools.

Riverside High School in the Northeast Beaver County School District has a law elective for grades 10, 11 and 12 which brings lawyers into the classroom and takes students into the courts. Trading textbooks and lectures for paperbacks, tapes, filmstrips, records, and discussion, the course digs into the justice system through direct experience and simulation. Last year three boys from the city spent a night in the county jail -- an experience which I am sure shook them to the core -- and this year on Law Day, instead of the usual pompous essays, they're going to simulate the first murder trial in the history of Beaver County.

Corky Goldstein, a young Harrisburg attorney who taught a course in the law at John Harris High School several years before I did, created a 12 week television series called "The Just Generation," which was produced by the Pennsylvania Public Television Network and aired over 230 other stations across the nation last fall. With a "class" of about 15 high school seniors from Harrisburg, Philadelphia and Baltimore, Howard Miller of "The Advocates" served as the "teacher" and The Ace Trucking Company, a band of somewhat zany actors, highlighted the issues with improvised skits. The twelve programs are already available to schools on videotape from our Division of Instructional Media Services, and we hope to adapt the videotape to film so that more schools can take advantage of the series.

I could summon several more examples of the ways in which our schools are involved in educating students in the law. Let me stop here, adding only that if I had my druthers I would have to choose from among several hundred programs to highlight instead of just several.

. . .

I trust that the students in this audience will corroborate my view that today's young people want something more from social studies than a memory bank of the Kings of England, the capitols of American cities, the exports of South America, and the battles of the Civil War. They want to know how those people, those places, and those products have influenced the development of civilization and have fashioned the world as we know it today. They want schools to prepare them to deal more effectively *with* the world, not to protect them *from* it. They want to understand and apply the concept of what it means to be a responsible citizen in a society which rests on an inevitable tension between liberty and order. In short, they want to grapple with the eloquent challenge of Learned Hand, one of the great judges of the twentieth century, who said during World War II:

I often wonder whether we do not rest our hopes too much upon constitutions, upon laws, upon courts. These are false hopes, believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it . . . The spirit of liberty is the spirit which is not too sure that it is right . . . the spirit which seeks to understand the minds of other men and women . . . the spirit (which recognizes) that there may be a kingdom where the least shall be heard and considered side by side with the greatest.

I trust you will remember those words as you proceed with the business of this Conference and that the practical skills you bring to this great challenge will, in turn, bring the spirit of liberty to hundreds more Pennsylvania students in the months ahead.

Law-Related Education: What Works and What Doesn't

Joel F. Henning
Staff Director, ABA Special Committee on Youth Education for Citizenship

I would like to talk with you first about the content of elementary and secondary law-related education, and then about some mechanical matters concerning its implementation. But let us approach the subject obliquely, by discussing another rather different subject with the hope that it, by analogy, will help us understand the nature of law-related studies.

Imagine a school in which no math is taught. Math, like law, is an important subject because it is impossible to survive in this complex, technological world without some grasp of basic mathematics. Therefore, such a school should have a math program.

Now let us assume that the authorities have agreed that math is important. Distinguished mathematicians are invited to speak before large assemblies of students and teachers once a year, on a day known as "Math Day." This approach is obviously better than nothing. However, it seems equally obvious that this approach is inadequate to the need.

The next year, the authorities of our hypothetical school ask more mathematicians to get involved in teaching math. From time to time, mathematicians are invited into classrooms where they answer students' questions. For example, one student may inquire what five times seven is, another may ask how much 128 divided by four is. Merely providing answers to the students, however, is not a satisfactory approach to the problem of teaching mathematics.

Thereupon, the school authorities ask the mathematicians to assist in in-service training. Teachers become equipped to answer students' questions concerning mathematics. Once again, the response is inadequate to the need. Teachers who can merely provide simple answers to simple questions are not preparing students to use mathematics in real life situations.

What is needed, obviously, is to teach mathematics in such a way that students will be able to understand mathematical concepts and use mathematical skills. The same can be said for teaching about law. **The effective approach is one in which students are asked to work through legal problems and trouble over their solutions rather than merely to memorize black letter rules of law.**

* * *

The goal of the American Bar Association Youth Education for Citizenship project is to help you develop rigorous, systematic law-related curriculum, kindergarten through twelfth grade. Thus teachers need not simply supply trivial answers to trivial legal questions. Instead, teachers can provide their students with an operative un-

derstanding of how our system of law and our legal institutions work.

While there are many approaches, most of us believe that a few components are essential for effective law-related education. First, we must teach about basic legal concepts upon which all rational societies build their legal systems -- concepts such as fairness, tolerance, honesty and responsibility. It is not too early, in the very earliest grades, to deal with these basic concepts. Younger children are very good at discussing these basic concepts, framed in terms of their real life experiences. During the past year, we worked up some materials for the Children's Television Workshop, which produces Sesame Street. With the help of the staff of the Law in a Free Society project we proved, I think, that such materials can be developed for use even by preschool children, ages 3-5.

Second, we must improve teaching concerning fundamental principles of American law. As we have heard already this afternoon, the Bill of Rights is appallingly misunderstood, or understood not at all, by too many people in this country. We should teach respect for it. But the Bill of Rights requires more than respect and ritual allegiance. It must be understood. The inherent conflicts and complexities which it contains must be appreciated. The fragile quality of our individual rights and liberties, and their concomitant responsibilities can only be understood by digging into real cases and posing problems of interpretation.

Another essential element in law education is the development of an appreciation of the scope of the law and of its effective limits. To what extent is law an effective means of regulating social behavior? Perhaps even more important, to what extent is law *not* an effective means of regulating social behavior? Other social mechanisms administered informally by individuals, families and communities are often more useful than law. Too many people think that the law is omnipotent. In this country law has been the principle agent for regulating behavior. It has also recently been the principle agent for social change, through our Supreme Court, as well as the Congress and President. For these reasons, many Americans think law can do anything. We often rush to find a legal solution, even when a legal solution is inappropriate.

Another important element of law education concerns inquiry into what the institutions of law are really like. How do they work? How does the legal system operate? What is due process? When students acquire an understanding of legal institutions and the legal process, they can evaluate their operation against the basic standards and fundamental principles upon which our legal system is built. Where there are discrepancies between the real and the ideal, students will be equipped rationally and reasonably to discuss why such discrepancies exist and what a responsible citizen can do to minimize them.

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Education of the sort we are here to discuss requires change in the content and methods used in typical social studies courses. A successful law education program will avoid either of two inappropriate approaches. One is the "Black Letter Law" strategy, pursuant to which teachers only teach facts. For example, they instruct their students in how many months they can spend in jail for stealing a hubcap, or at what age they can legally drive or drink. They will insist on memorization of legal terms. Professor Paul Freund, of Harvard Law School, formulated a distinction between "ert" and "inert" knowledge. He would characterize the kind of facts transmitted in this approach as "inert" knowledge. What we are after is "ert" knowledge. However, mere information about law is useful "bait" to interest students in the essence of law. Some such instruction is fine, so long as it is understood that the goal is to deal with issues of law in an inquiry process which emphasizes the ambiguities, uncertainties and troublesome complexities of the legal system.

The second educational approach to avoid is simple-minded transmittal of values. This is not a very meaningful approach to law education. Also, as an approach to moral education I am told that it is extremely ineffective in accomplishing attitude change and behavior modification. For example, until recently students were taught that "Progress" was good; this value was uncritically transmitted from teacher to student. As I look over new curriculum materials available on the problems of the environment, a shift seems to have occured. Now the value transmitted is that "Progress" is bad. Both are false and empty values. A useful approach to the subject of ecology versus industrialization would include critical questioning of the kinds of rules, the kinds of legal arrangements, that will best serve the complex needs of modern society.

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Let me talk briefly about some elements of good programs in law education. First, many young people perceive that they are powerless with regard to the "system." To reduce their sense of powerlessness, we must demonstrate that they can have impact on matters of importance in their communities. For example, there is much that can be done to teach young people about what due process is and how it works. But there is no way it can effectively be done if the learning environment is one that is alien to due process. Due process means that

rules are made and enforced in a reasonable way. The classroom and the school are mini-legal systems, though not necessarily mini-democracies. Students should be encouraged to examine the process of rule-making and rule-enforcing with their teachers and their school administrators. Students should be encouraged to help in making their school environment a laboratory for legal education.

Controversy is another important and occasionally difficult element which cannot be ignored. Many teachers are fearful of teaching controversy. Some teachers are formally or informally bound by rules limiting their ability to deal with controversial issues. You cannot teach law without teaching controversy. A controversy is a difference of opinion. As Justice Oliver Wendell Holmes said, "A Constitution is made for people of fundamentally differing views." Our legal system has controversy built in: between the states and the federal government; between the three branches of government; between the political parties. Indeed, every legal issue is controversial. Every legal case is one person or group *versus* another. Where there is no controversy, there is no need for law.

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We are asking for dramatic changes in social studies education. But we are not asking educators to "go it alone." Secretary Pittenger has already reminded you that community resources are available to help educators in accomplishing these goals. The American Bar Association will help you. Your state and local bar associations will also help. Your judges, prosecutors, police, and your state department of education will all help you find community resources to implement teacher training programs and enrich classroom experiences. However, do not let lawyers, police, prosecutors, or judges simply come in to your classrooms and do whatever they please. They have to be effectively used. They have to be exploited in a constructive sense. For example, if you have a lawyer come into your classroom and give a lecture without having carefully briefed him in advance, he may enter like a visiting Bishop, give the Word and the Benediction, and leave. Your students will hardly be the better for the visit. I am suggesting that community volunteers must be carefully briefed so that their special classroom and in-service training contributions will be as useful as possible.

Lawyers can help educators in other ways. The nature of such help will vary in every community. In general, your local bar leaders can help you convince school boards and administrators that such programs are legitimate and feasible. Lawyers can usefully join in the establishment of interdisciplinary committees to oversee such projects, and to insure that they obtain whatever additional support—including financial—is required. Lawyers are also helpful in establishing "hot lines," so teachers confronted with legal questions raised in class can locate a lawyer who will help find the answer.

This movement to see that law-related studies are added to elementary and secondary curriculum is real. It is not a hypothetical program of educational reform that will die aborning. The ABA Special Committee on Youth Education for Citizenship has identified hundreds of projects now operating successfully throughout the country. However, to say that the movement is real is not to say that developing such a program is easy. Successful programs require hard work on the parts of educators, lawyers, and other community volunteers. We think you will find the rewards worth the costs. We hope you will attempt to develop such a project in your community.

Reflections on Law Studies In The Schools Today

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When I wa[illegible]ed to designate a topic for this talk I thought for a[illegible]e, and I told the powers that be to designate my [illegible]as "Reflections on Law Studies in the Schools Too[illegible]" The reason I chose the word "reflections" is that each of us is the greatest living authority on his own reflections. And so, what you're going to hear is not subject to refutation by anyone because these are my reflections.

Since the audience consists mainly of educators and lawyers, I shall refrain scrupulously from using pedaguese and legalese. There will be absolutely no mention of the affective and cognitive domain, nor will any word be said on behaviorial objectives. In kind, I shall scrupulously refrain from such terms as sociological jurisprudence, legal positivism and legal realism. I shall use only the language of the realm.

The third point I wish to make, by way of introduction, is that whatever I say today applies to elementary education, as well as secondary education.

My last preliminary comment directs your attention to the question: When did law-related education really begin? If you give this question some thought, you may agree with me that law-related education probably began at that great moment in history when Moses laboriously climbed to the top of that mountain, met the distinguished Party of the First Part, had an extended conference, and when he returned, he became the first law reporter in history. As a result of That Conference there was a tremendous multiplier effect throughout the world, a development which one of our speakers this morning described as the greatest contribution of Western civilization.

This gathering, in a way, is also a summit meeting. It isn't easy to bring together a group of distinguished educators and lawyers from New York, Pennsylvania and New Jersey at one meeting. Hopefully, out of this summit will arise a multiplier effect in this region as powerful as that of Moses.

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I would like to share with you some of my thoughts about the aims of law-related education or law studies in the schools. Our approach will be to arrange the aims into four traditional categories: knowledge and understanding, skills, attitudes, and appreciations.

With reference to knowledge and understanding, it seems to me that there are five threads which weave their way through the delicate and fragile fabric of American life. These threads or major ideas are: liberty, justice, equality, property, and power. The dimensions of each of these ideas can and have been explored through history, through economics, through political

science, through sociology, through anthropology, and through philosophy. I would like to suggest to you that one of the most effective ways of looking at each of these ideas is through the perspective of the law.

For teaching purposes I know of no better definition of liberty than the First Amendment Freedoms. For me, as a teacher, there is no better explanation of due process of law or criminal justice than that deliniated in Amendments IV, V, VI, and VIII of the Constitution of the United States.

The idea of equality is also engraved in our Constitution, but not by way of a simple dictionary definition. Amendments XIII, XIV and XV speak to us in the words of racial equality. Amendment XIX opens the door to sexual equality in politics. This may be extended in the very near future by the Equal Rights Amendment. Amendments XXIII and XXIV speak of political equality in the District of Columbia and the abolition of the poll tax, while the 26th Amendment extends suffrage to American youth. To all these dimensions of equality the Supreme Court has added its famous one man, one vote rulings, which should read today as one-person, one-vote rulings.

With reference to property, that idea is mentioned in Amendments V and XIV. The nature and uses of property in our society must be examined with our students because they live in a property-minded society. The relationship today between the reality of economic bigness and the theory of competitive capitalism must be explored because this development has law-based implications. In addition, the uses of property today are running into the paths of the guardians of our ecological environment with the result that we are faced with a confrontation between the right to property on the one side, and the quality of life on the other.

The fifth major idea is power, and if the founding fathers of this country knew anything, they knew what it meant to be confronted with power. They respected power, feared its abuse, and decentralized it. Power has been decentralized in our Constitution in the form of the division of powers between federal government and state and separation of powers among the legislative, executive, and judicial.

The inevitable by-product of a law-oriented inquiry into the dimensions of these five major ideas is the asking of important questions and the explorations of significant answers. For example, how do we Americans differentiate liberty from license? Is there a law for the rich and a law for the poor? My students have always educated me and I have had to change this question to meet their verysearching criticism. The more searching question is: Is there a law for the rich and a law for the poor and a law for the middle income? Is the adversary system of this country obsolete? Is there a better method of arriving at the truth? Is the decentralization of powers which was incorporated into our Constitution passing into the limbo of history? Are our states obsolete entities? What is happening to our system of separation of powers and checks and balances? Is the police power of the state being blunted by the power of property? What happens when a ruling of our High Court, which is the supreme law of the land, is confronted by local, state or regional resistance? We have to examine what happens when this occurs and then we should ask the question: what should be done about this resistance? These are some of the thoughts that ought to be uppermost in our minds as we look at these five major ideas.

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This morning you heard a number of speakers discuss the importance of skills in law studies. The holy trinity of skills has been reading, writing, and arithmetic. In addition to these, educators have added speaking and thinking. **It has been my experience that the introduction of law studies in the schools adds a sophisticated dimension to skills development. Law materials, by their very nature, force students and teachers to analyze the issues in value conflicts.** This afternoon someone asked us at a small group session: Doesn't law-related education tend to lead students to believe that they are lawyers? If law-related education is taught properly the students are not lawyers. They become American citizens who begin to look at value conflicts a little differently than they had. For example, what happens when an individual confronts another individual in an ideological confrontation, or an individual confronts a group, or the group confronts an individual, or the government confronts an individual, or an individual confronts the government? Each of these confrontations involves a conflict of values. The conflict is very seldom the conflict between a good value and a bad value. The conflict is usually between a good value and a good value, and how do we resolve that? Here is an opportunity for thinking in depth.

In addition, case studies develop in us skills in briefing cases, in looking at a case and deciding what are relevant facts against non-relevant facts and what are relevant laws against non-relevant laws? What are the plaintiff's arguments and the defendant's arguments? What are the issues in the case? What is the decision? What are the opinions supporting the decision? And lastly, of what significance is this decision? Our students, and I suppose many of us too, feel that when the Supreme Court hands down an opinion -- that ends the case. I would like to

suggest that, more often than not, that begins another case. For example, The *Gideon* case held that an indigent defendant accused of a serious crime is entitled to the assistance of counsel appointed by the state. It settled that issue, but raised another issue. If an indigent defendant accused of a serious crime is entitled to the assistance of counsel, what kind of counsel is he going to receive under our system? Skill in analyzing the chain reaction of problem-solution-problem is invaluable in breaking through the jungle of data which impinge on our senses.

Case studies in law materials develop skill in reasoning. Most of us are acquainted with the traditional analytical skills of the inductive method and the deductive method. Charles Sanders Peirce, in one of his great essays, speaks of the abductive method. My students, who are very well versed in such books as *Games People Play*, tell me that there is a seductive method. So we have at least four methods of inquiry.

Paul Freund, who has done some of the most perceptive writing in law-related education, has published an essay on inquiry skills which merits the attention of all who are involved in law studies. Entitled "The Law and the Schools," the essay appears in *The Law and Justice*. Freund distinguishes seven modes of thought or legal reasoning which can sharpen the thinking of students. One is dialectical thinking, and the law lends itself especially to that. Justice Holmes, it is said, had the habit of entering his office each morning, throwing his hat on the rack, and challenging his law secretaries with the teaser: "State any proposition and I will deny it." This is one way to develop analytical skills.

There is contextual thinking. What is the cause of an event? There is ethical thinking. What is fair? What conduct is just? What conduct is unethical? There is genetic thinking, or the organic development of an idea. Many of our students tend to think of the privilege against self-incrimination as the shield used by Communists and racketeers. To understand the privilege against self-incrimination we have to engage in some genetic thinking about how this came into being, and the blood, toil, sweat, and tears that accompanied its emergence as a principle. Then there is associative thinking. I like especially this little quote from Freund, who says, "We live by metaphor, we advance by simile, and we rise by concept." We have such tantalizing phrases in the law as "a wall of separation between church and state." "Ignorance of the law is no excuse," "the reasonably prudent man," and "a government of laws and not of men." Each of these has little meaning unless it is subjected to the scalpel of reason so that its thrust is measured by the mind.

Then comes institutional thinking or the legal process, as it unfolds in the legal forum. And last and perhaps most important, according to Freund and according to myself, is self-critical thinking. I can best explain self-critical thinking by telling you my favorite story. My friends in the audience I hope will forgive me for being subjected to it again. Up to this point I have quoted freely from Paul Freund. This story is my contribution to the nature of self-critical thinking. This is a story of a professor who gave the same final examination each semester. His course was very popular. Students flocked to it in great numbers and for a time they got their predicted A. Then there came a time in the life of the professor and his students when his grades began to follow a bell-shaped curve and some of the students began to fail. One of the students, quite upset by failure, went up to the professor and said, "Look, sir, the day I took your course I knew the final exam. One of the A students in the past helped me to prepare for this final exam. He got an A in the past. How is it that you failed me today?" The professor looked at him and said, "Young man, all that you seem to know is that each semester I ask the same questions on my final exam. What you do not seem to understand is that each semester now I change the answers." And that is one of the great stories in law and in social studies. We do change the answers to the "big questions," "the cosmological questions of our time," the questions that call forth the nature and meaning and scope of liberty, justice, equality.

There is another type of skill that we can develop in teaching law-related materials, and that is skill in role-playing. Role-playing of a very important sort takes place in moot court cases and mock trials. We have all kinds of simulations, and some of you, I hope, were stimulated by the game of Police Patrol, played this afternoon. I hope that tomorrow you will participate in the Jury Selection Game. Simulation adds the dimension of emotional involvement to intellectual analysis.

There are forums and debates, which require skill. There are symposia and mock legislatures in which our students can engage, as well as mock episodes like the Xanadu crisis, a complicated episode involving separation of powers. There are other exercises like rewriting the Constitution of the United States, or if you are less ambitious, rewriting the Bill of Rights in order to bring it up to date.

There is a very rich literature in the law which we can use with our students. *Lord of the Flies*, the great Japanese Story, "Rashomon," in which a group of people see the same episode quite differently, *To Kill a Mocking Bird*, and *The Story of the OK Corral*. There are many interesting tales which we can incorporate into the literature of the law to stimulate

the flow of intellectual and emotional juices.

In case law there are some memorable quotations, some great quotations which lend themselves to skill development. The simple ones you all know. Your right to swing your arm ends just where the other man's nose begins. Freedom of speech does not include the right to yell fire falsely in a crowded theater. Again from Holmes: "If there is any principle of the Constitution that law imperatively calls for, it is the principle of free thought, not free thought for those who agree with us, but freedom for the thought we hate." There are many others that will sharpen the mind and, at the same time, lead the student into the domain of attitudes.

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So now a word about attitudes. I said a little something about knowledge and understanding and skills. **The attitude developed by law studies should be one of honest inquiry.** Many of the educators in this audience know that the word inquiry is being used today with "systematic ambiguity." In the name of inquiry, many students are being led through a complicated series of exercises to foregone conclusions. This is not inquiry. Law-related education, like all effective education, rejects that. By inquiry, or critical thinking, or reflective thought I mean an honest search for answers to really important questions -- important to students and to ourselves. There are all kinds of attitudinal predilections or positions that we can study by using cases. For example, we can present students the facts of a case, ask them to resolve it, then have them compare their decision to that of the court. Or we can give them the decision and ask them whether in the interest of liberty, justice, or equality, the decision is justified.

Honest inquiry, as I view it, is a never-ending search for viable alternatives in real-life situations. Controversial issues, when law-related, force each of us to face issues realistically and honestly. Inquiry is an attitude that recognizes that all of life is the story of never-ending value differences, forcing us to live with questions that defy instant solutions. The great equations of life and of the law seem to me to be the following: My right and your need, liberty and license, right and responsibility, freedom and security, liberty and equality, free press and fair trial, the right of property and the quality of life. Some of these rights and values are on a collision course. We know that in many neighborhoods peaceful resolution of disputes is on a collision course with civil disobedience and even violence. All of these equations are, for me, the calculus which forces us to think in terms of priorities and hierarchies of values. That is part of the great story of the law. We have to make decisions. We cannot wait for the long run. We make decisions the best way we can, provided we have some conception of what it means to be living in a country of liberty, justice, equality, property, and power.

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And now for the fourth of the categories -- appreciation. I use appreciation a little differently from my colleagues. **Appreciation to me means getting under the skin of your students, because many of our students today are tuned out, turned off.**

Our students, in view of the fact that many of them or most of them are the television generation, are acutely aware of the human condition as it has been portrayed on the news. This is a condition of creeping corruption in our lives, a corruption that has found its way not only into members of our families, but the people in high offices. Corruption and lawlessness are facts of life, and are very distressing, especially today. What does the law offer us and our students, many whose lives are built around despair about the future? I have no answer to this problem, but I would like to suggest something to think about. We must explore with our students the causes of lawlessness in our society. There are reasons for it and there are consequences for each of us if we permit lawlessness to become the law of the land. As one newspaper commentator recently said, "America is passing from the age of the common man to the age of the common crook."

Law materials can show the use of law as a possible tool in the confrontation and clarification of society's problems. For example, the law has done some remarkable things, which we tend to forget. It is the law that has exposed and will eventually try the lawless. We can show our students in a variety of ways how the law has been grappling with contemporary issues with varying degrees of success. For example, we are developing in this country a law of poverty. It is something new. We are developing a law of ecology. That is new too. Civil rights cases and the laws are not so new, but the law is helping us to clarify the questions which we should be asking. Criminal justice was transformed by the Warren Court, and those principles of procedural due process are still with us. One-person, one-vote law is being modified, but that also is still with us. The decisions relating to the juvenile accused is an emerging field of law. Education law is being clarified in a variety of ways. There are a multiplicity and variety of cases dealing with students going to the federal courts today. The law has been in my judgement a constructive and positive influence on the implementation of American ideals. The picture is a mixed one. We have to explore the various dimensions with our students.

The use of law materials furnish an outlet for students' needs to do something constructive. By appreciation I mean doing something about what you believe. In some communities students are being urged to use the law to change the law. Tomorrow you are going to have the opportunity to hear several section meetings in which students in New Jersey are engaged in realistic activities, using the instruments of the law to effect constructive change.

A principle that runs through our history is that ours is a government of laws and not of men. An appreciation of the rule of law as a means of approaching society's problems may mean that recourse to the courtrooms and legislative chambers should have priority over recourse to the street. Recourse to the street should be a last resort, and it becomes a last resort for those who understand the uses of the law as instruments for societal change.

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The schools cannot escape the clash of value systems and ideas which resound in our society. We cannot escape and none of us is a bystander. Educators, lawyers, criminal justice officials, police, the community, students at law school and elementary, junior and senior high, must work together to devise ways of bringing the great issues of our times into the classrooms and into the schools. One way to accomplish this is to utilize the many materials and resource people we have available in the law as catalysts for probing value conflicts. The use of the law, in its best sense, seeks to reconcile the past with the present, continuity with change, and, as the Chinese say, -- since it is now respectable to quote the Chinese -- the use of the law helps us to reconcile yin and yang. The study of law even helps us to produce a generation of citizens who are users of the law, because they understand the nature and the potential of the law and its great accomplishments, both in the past and in the future.

By way of conclusion, I think I have found the proper ending to these remarks. Forty years ago Justice Holmes said something that has a flavor reminiscent of John Dewey. Since both can be considered great educators and since the thought is representative of both, it is fitting to end this talk before educators and lawyers by quoting from Holmes: "Man is born a predestined idealist, for he is born to act. To act is to affirm the worth of an end and to persist in affirming the worth of an end is to make an ideal. We all, the most unbelieving of us, walk by faith. We do our work and live our lives not merely to vent and to realize our inner force, but with a blind and trembling hope that somehow the world will be a little better for our striving."

Perhaps all of us involved in law education will marshall our forces to make this world a little more civil, a little more dignified, a little more sensitive to liberty, justice, and equality, and hopefully, a little more honest.